

REMARKS

Claims 91-102, 105, 106 and 114-122 are under examination in this application. Claims 1-90 and 113 have been canceled without prejudice or disclaimer. Claims 103, 104 and 107-112 have been withdrawn by the Examiner as being drawn to non-elected subject matter. Claims 91, 96 and 105 have been amended. Claims 114-122 have been newly added.

Applicants, by canceling or amending any claims herein, make no admission as to the validity of any rejection made by the Examiner against any of these claims. Applicants reserve the right to reassert any of the claims canceled herein or the original claim scope of any claim amended herein, in a continuing application.

Each of claims 91, 96 and 105 have been amended to recite “between 800 and 2000 Da.” Support for these amendments can be found throughout the specification and claims as originally filed.

Claims 114-122 have been added. Support for new claims 114-122 can be found throughout the specification and claims as originally filed.

No new matter has been added.

In view of the remarks set forth below, further and favorable consideration is respectfully requested.

I. At page 2 of the Official Action, claims 91-102, 105 and 106 have been rejected under 35 U.S.C. § 112, first paragraph.

The Examiner asserts that claims 91-102, 105 and 106 fail to comply with the written description requirement. In particular the Examiner asserts that the specification does not support the range of “between 800 and 200 Da.”

Applicants respectfully traverse this rejection.

Applicants submit that this rejection has been obviated by the amendment of claims 91, 96 and 105. In particular claims 91, 96 and 105 have been amended to recite “between 800 and 2000 Da.”

Applicants respectfully submit that the claims are now in full compliance with the written description requirement set forth in 35 USC § 112, first paragraph. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

II. At page 3 of the Official Action, claims 91, 92, 94, 95, and 105 have been rejected under 35 USC § 102(b) as being anticipated by IL 120929.

The Examiner has rejected claims 91, 92, 94, 95, and 105 under 35 U.S.C. § 102 as being anticipated by IL 120929 (hereafter “the ‘929 patent”). The Examiner asserts that the IL reference describes each and every element of claims 91, 92, 94, 95, and 105.

In view of the remarks set forth herein, this rejection is respectfully traversed.

The test for anticipation is whether each and every element as set forth is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); MPEP § 2131. The identical invention must be shown in as complete detail as is contained in the claim.

Richardson v. Suzuki Motor Co., 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); MPEP § 2131.

The elements must also be arranged as required by the claim. *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990).

Applicants respectfully submit that the '929 patent does not anticipate claims 91, 92, 94, 95 and 105 for at least the reason that it does not describe a composition comprising an activated citrus peel extract (ACPE), as prepared according to the present invention. In fact, the '929 publication does not describe the procedure for making the ACPE of the present invention, nor a composition comprising the ingredients recited in the claims; hence the '929 patent is none-enabling with respect to a 'composition' comprising an ACPE as claimed in claims 91, 92, 94, 95, 105.

Further, when reading the disclosure of the present application it is apparent that the ACPE comprised in the herein claimed composition is different from the 'substance' produced by the method of the 929 patent. To make a point, the ACPE extract prepared as claimed herein was 4 times as active against Cladosporium as was the extract of IL '929 and twice as active against E. coli compared to the extract disclosed in the IL '929 patent (page 20, lines 10-14 of the specification).

Thus, not only does the '929 patent not teach of a composition, as claimed in any of claims 91, 92, 94, 95, 105 but it also does not teach on an active substance that is the same as the ACPE which is comprised in the claimed composition because the substance disclosed in the '929 patent and the ACPE extract prepared according to the steps of claim 91 are two different chemical compositions as evidenced by the different activity attributed to each of the two materials. The person of skill in the art would find it apparent that the two materials having a different activity are different by nature.

Taken together, the extract disclosed in the '929 patent is clearly different from the ACPE extract of claims 91, 92, 94, 95 and 105 (as well as fromm the extract of claims 114-122) because it differs in its effect, as explained hereinabove. Notwithstanding, the '929 patent does not teach on a composition as defined in any one of claims 91, 92, 94, 95, 105. The Examiner's assertion that "it is inherent that oligosaccharides, short peptides, flavanoid glycosides, fatty acids and triglycerides are present in the composition of IL since the composition of IL was made the same way..." is unfounded since the '929 patent does not teach on a composition and is completely none-enabling with respect to the composition.

Applicant's statement, on page 18 (example 1) is non-relevant since it merely presents a non obliging possibility to use either an extract according to the '929 patent or an ACPE in the formulation of a composition. The presently claimed subject matter isclearly distinguished over the '929 patent.

Accordingly, Applicants submit that the '929 patent does not anticipate, either expressly or inherently, each and every element of amended claims 91, 92, 94, 95, and 105, as required under 35 USC § 102(b). Therefore, Applicants respectfully request that the Examiner reconsider and withdraw the rejection of claims 91, 92, 94, 95, and 105 under 35 USC § 102(b).

III. At page 8 of the Official Action, claims 91-102, 105 and 106 have been rejected under 35 USC § 103(a) as obvious over the '929 patent.

The Examiner asserts that claims 91-102, 105 and 106 are obvious for the reasons set forth in the Official Action.

Applicants respectfully traverse this rejection.

With regard to the obviousness rejection under 35 U.S.C. § 103, to establish a *prima facie* case of obviousness, the PTO must satisfy three requirements. First, as the U.S. Supreme Court held in *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398 (2007), “a court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions. ...it [may] be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. ...it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does... because inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known.” (*KSR*, 550 U.S. 398 at 417.) Second, the proposed modification of the prior art must have had a reasonable expectation of success, determined from the vantage point of the skilled artisan at the time the invention was made. *Amgen Inc. v. Chugai Pharm. Co.*, 18 USPQ2d 1016, 1023 (Fed. Cir. 1991). Lastly, the prior art references must teach or suggest all the

limitations of the claims. *In re Wilson*, 165 USPQ 494, 496 (C.C.P.A. 1970).

Applicants respectfully submit that a *prima facie* case of obviousness has not been established because the cited reference fails to teach or suggest every element of the presently pending subject matter, as required by *In re Wilson*. Additionally, Applicants submit that the presently claimed process produce a different extract from that of the '929 patent.

The differences between the presently claimed subject matter and the '929 patent are discussed in detail above. For the sake of compact prosecution the remarks are not repeated herein. However, Applicants submit that for the same reasons as set forth with regard to the anticipation rejection, the presently claimed subject matter is non-obvious. Therefore, Applicants respectfully request reconsideration and withdrawal of this rejection.

In further support of the patentability of the presently claimed subject matter, Applicants respectfully direct the Examiner's attention to the remarks submitted in Applicants' previous Amendment and Response regarding the differences between the process of the present claims and that of the 929' patent. Applicant hereby incorporates those remarks by reference and request that the Examiner reconsider the same.

In view of the remarks set forth herein, it is submitted that the cited art does not render the obvious within the meaning of 35 USC § 103 (a). Accordingly, the Examiner is respectfully requested to withdraw the rejection of claims 91-102, 105 and 106.

IV. New claims 114-122

Applicants respectfully submit that new claims 114-122 are novel and non-obvious. Accordingly, Applicants respectfully request an indication that all of the pending claims are now allowable.

CONCLUSION

In view of the foregoing, Applicants submit that the application is in condition for immediate allowance. Early notice to that effect is earnestly solicited. The Examiner is invited to contact the undersigned attorney if it is believed that such contact will expedite the prosecution of the application.

In the event this paper is not timely filed, Applicants petition for an appropriate extension of time. Please charge any fee deficiency or credit any overpayment to Deposit Account No. 14-0112.

Respectfully submitted,

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